

The Mercury News

MercuryNews.com

Posted on Wed, Jun. 14, 2006

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'Three strikes' should account for minor crimes

BUDGET BUCKLING UNDER SENTENCING RULES

Mercury News Editorial

Legislators bemoan the unchecked growth at California's prisons -- soon to house a record 175,000 inmates -- and the budget-busting cost, approaching \$9 billion, of keeping them there. Yet they balk at doing anything about it.

An example happened earlier this month, when senators punted on an opportunity to allow voters to make very modest changes to the state's 12-year-old "three strikes, you're out" law.

Senate Majority Leader Gloria Romero, D-Los Angeles, decided not to bring her initiative to a vote when she realized not enough fellow Democrats were with her. Romero may yet be able to push the bill through the Legislature if she can find her way by the district attorneys' association, which has consistently fought amending the law.

Under the "three strikes" law, criminals who have committed two serious or violent crimes are sentenced to 25 years to life if they are convicted of any third felony. The broad definition of a "third strike" is the problem: State prisons are brimming with thousands of inmates put away for life for check forgery, drug use and petty theft, including, in two celebrated cases, golf clubs and videotapes. These non-violent offenders cost taxpayers more than \$35,000 annually -- an expense that will climb as inmates age and need medical care. In addition, continued lengthy prison terms for minor "third strikes" will feed the need for more prisons that will employ members of the prison guards' union that the Legislature, for years, has indulged.

The numbers of "three strikes" convictions has declined over the past few years, as judges and district attorneys in some of the largest counties -- Los Angeles, San Francisco and Santa Clara under District Attorney George Kennedy -- have used discretion in filing "third strike" charges. But that's not been true in rural and politically conservative counties. As a result, too often, sentences are determined not by the severity of the crime but the county where the crimes were committed or who the DA happened to be.

Two years ago, voters came close to passing Proposition 66, which would have restricted "third strike" sentences to violent and serious offenses. Romero's bill wouldn't go nearly as far: Those who committed non-serious felonies would still get 25 years to life if there was a weapon, an intent to physically harm the victim, a sexual offense or drug trafficking. Those already convicted of a non-serious or non-violent "third Strike" crime wouldn't automatically be set free; a judge in the county where the crime was committed would hold a hearing and could consider other factors.

Los Angeles County District Attorney Steve Cooley, who had opposed Proposition 66, wrote Romero's bill, SB 1642. He estimates that 2,100 prison inmates would qualify for a judge's review -- 87 in Santa Clara County -- under the proposed law compared with an estimated 20,000 to 30,000 inmates who would have been set free under Proposition 66.

The California District Attorneys Association hyperventilated against even this bare-bones version of reform, and some senators waffled. Both Sens. Elaine Alquist, D-San Jose, and Joe Simitian, D-Palo Alto, said they oppose the provision that would allow some prisoners to petition for release. But they say that in principle they favor reforming the "third strike."

But lawmakers have been saying that for years, with nothing to show as costs continued to rise. SB 1642 should be put on the ballot in November so voters can make the final decision.

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